

REMARKS / ARGUMENTS

This amendment is submitted in full response to the outstanding Office Action dated March 14, 2008 wherein claims 19, 20, 22-28 and 32 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cox. In addition, claims 29 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Schmidt, wherein both the Cox and Schmidt references were previously cited and applied in the last Office Action having a mail date of September 13, 2007.

In addition to the above claims, 1-18 stand withdrawn. Further, the indicated allowability of claim 21 has been withdrawn.

For the reasons set forth in greater detail the outstanding rejections are respectfully traversed.

Telephone Conference with Examiner

The undersigned attorney wishes to thank the Examiner for his courteousness in conducting a telephone conversation, on June 19, 2008 with the undersigned attorney, to discuss the merits of this application. In accord with this telephone conference, claim 19 has been amended to more specifically define Applicant's invention in a manner which is believed to overcome the outstanding rejections of the indicated claims,

based on the above noted and applied references of record.

Applicant's Invention As Compared To the References of Record

As now defined in amended, independent claim 19, Applicant's invention is directed to an exercise assembly for a user's upper body including a frame having a base disposed on a supporting surface and a track assembly fixedly connected to the frame. The track assembly includes an open end and a closed end defined by two track segments collectively convergent from the open end to the closed end. In addition the claimed exercise assembly of Applicant's invention is now more specifically defined by the two track segments being connected in fixed relation to one another and being angularly inclined relative to the supporting surface.

Applicant's claimed invention further includes two hand grips linearly and reciprocally movable along different ones of the track segments as well as a resistance assembly including a line extending along a predetermined path of travel in interconnecting relation to the hand grips. The resistance assembly includes a resistance mechanism engaging the line and structured to exert a movement restricting force thereon. A further distinguishing structural feature of Applicant's claimed invention is the aforementioned open end disposed and

sufficiently dimensioned to at least partially receive the user between the corresponding proximal ends of the two track segments, while the user is in a seated, substantially upright orientation.

Therefore as described above and specifically defined in independent claim 19, as well as the remaining dependent claims in this application, Applicant contends that the structural features, as recited are distinguishable from the Cox and Schmidt references, whether considered either singularly or in combination with one another.

More specifically, the track segments of the track assembly are now defined as being connected in fixed relation to one another, wherein the entire track assembly is fixedly connected to the frame of the exercise assembly. This is clearly distinguishable from the Cox reference. The Examiner's attention is respectfully directed to Figures 1 and 2 and column 2, lines 41-47. As described therein, the structural features of the Cox reference include a first end 12 of each of the simulator arms 10 being pivoted, by means of a pivot pin 15, to the support structure 4. This movable connection allows a pivotal movement of the second opposite end 14 of each of the simulator pivot arms 10 in an arcuate path, as schematically represented by directional arrows A in Figure 2. In contrast,

the fixed connection and position of the track segments 18 and 20 of Applicant's track assembly are necessary for an appropriate and correct operation of Applicant's exercise assembly. This fixed relation between the track segments 18 and 20 is clearly distinguishable from the pivotal arms or track segments 10 of the Cox reference as outlined in detail in the cited portion of the specification.

The Examiner's attention is further directed to column 2, lines 48-63 wherein the pivotal features of the arms 10 is further emphasized by making specific reference to the ability of the pivot arms 10 to pivot in either direction along the arc A, as schematically represented in Figure 2. Also with reference to Figure 1 of Cox, it is clear that the pivot arms 10 are disposed in **parallel relation** to the supporting surface of the base 4, whether the supporting surface is considered as the top surface 8 or the anti-friction surface 17 of the support base 4.

Applicant is confused by the continued representation by the Examiner stated on page 5 of the outstanding Office Action. More specifically, the Examiner specifically states in a single sentence paragraph that "Referring to figures 1, it is clear that the track segments are angularly inclined relative to the supporting surface 4 (90 degrees)." Even the most casual

examination of Figure 1, clearly indicates that both the pivot arms 10 are arranged in **parallel** relation to the supporting surface of the base 4, rather than in perpendicular relation thereto. If the Examiner still contends that the pivot arms are disposed in perpendicular relation to the supporting portions of the support base 4, a detailed explanation of the basis for this contention is respectfully requested.

Applicant again emphasizes his position that the Cox reference, being directed to an ice skating simulator apparatus and method of using such apparatus, is not an appropriate basis for supporting a rejection under 35 U.S.C. 102 of Applicant's exercise assembly. As defined in the claims and repeatedly described throughout the specification, Applicant's exercise assembly is structured for exercising a user's upper body. In contrast, the Cox reference includes two foot platforms 28 designed to support and retain opposite feet of a user, wherein the foot platforms 28 travel along the length of the arms or tracks 10, while they reciprocally pivot along the arcuate path A of Figure 2. Therefore, Cox is structurally incapable of at least partially receiving a user between the two proximal ends of the track segments, at the open end of the track assembly, while allowing the user to use his/her hands to operate the exercise assembly in the intended manner. It is well settled

that in rejecting a claimed invention under 35 U.S.C. 102, an anticipating reference must disclose the **identical invention** in as complete detail as is contained in the patent claims being rejected. Case law cited by Applicant in support of this well established criteria, is set forth in the amendment filed in response to the outstanding Office Action of September 13, 2007.

Turning to the Cox and Schmidt combination, Applicant contends that Schmidt does not overcome the above noted deficiencies in the Cox reference. More specifically neither Cox nor Schmidt disclose a track assembly fixedly connected to a frame of an exercise assembly intended to exercise a user's upper body, wherein the track assembly includes two track segments connected in fixed relation to one another and angularly inclined relative to a supporting surface.

Conclusion

Based on the above amendments and remarks, the Examiner's reconsideration of the amended claims in this application is respectfully requested. For the reasons set forth above Applicant believes that this application is in condition for allowance and such action is respectfully solicited.

In addition, a request for an appropriate extension of time is enclosed herewith along with the corresponding PTO fee. In

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the event that any additional fee may be required by the filing of this paper, the Commissioner is hereby authorized to charge any fees and/or credits to our **Deposit Account No. 13-1227.**

Respectfully Submitted,

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